

Ricky Lynn Cole
Reg. No. 31788-177
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FILED

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLOMBIA

RECEIVED

JUL 18 2013

CHAMBERS OF
THOMAS F. HOGAN

RICKY LYNN COLE,
Plaintiff/Movant,

v.

FEDERAL BUREAU OF INVESTIGATION,
Defendant/Respondent.

Case: 1:13-cv-01205

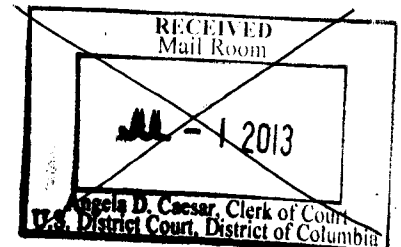
Assigned To : Sullivan, Emmet G.

Assign. Date : 8/5/2013

Description: FOIA/PRIVACY ACT

MOTION TO COMPEL PRODUCTION OF RECORDS
PURSUANT TO THE FREEDOM OF INFORMATION ACT

Plaintiff in pro se, Ricky Lynn Cole ("Cole"), hereby respectfully moves this Honorable Court to compel the Defendant, Federal Bureau of Investigation ("FBI") to produce requested records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, because of an overriding public interest in knowing whether the federal government is withholding information of Government impropriety, specifically substantial prosecutorial misconduct by an agent of the FBI.



I. PROCEDURAL HISTORY

On September 21, 2011, Cole submitted a FOIA request to the FBI for information from its records. See Appendix 1. The request specifically sought information relating to the employment status, complaint history, and disciplinary records of FBI Special Agent Derek Stone, who was assigned in 2005 to the FBI Office in Fairbanks, Alaska.

On October 13, 2011, the FBI denied Cole's FOIA request, citing personal privacy exemptions 5 U.S.C. § 552(b)(6), (7)(C). On November 1, 2011, Cole filed an administrative appeal to the Department of Justice Office of Information Policy ("OIP"). See Appendix 2-3. On January 11, 2012, the OIP denied Cole's appeal, again citing the personal privacy exemptions. See Appendix 4-5.

II. JURISDICTION

Cole's administrative remedies are properly exhausted; therefore, this Honorable Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

III. LEGAL STANDARDS

FOIA was enacted so that citizens could discover "what their government is up to." U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989). FOIA requires the release of Government records upon request, and its purpose "is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." Nat'l Labor Relations Board v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

FOIA includes nine exemptions under which the Government may refuse to disclose responsive records for specific reasons. "The United States Supreme Court has 'consistently stated that FOIA exemptions are to be narrowly construed.'" Wolf v. CIA, 473 F.3d 370, 374, 374 U.S. App. D.C. 230 (D.C. Cir. 2007) (quoting DOJ v. Julian, 486 U.S. 1, 8 (1988)).

FOIA therefore "seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially public right to secure such information from possibly unwilling hands." Dep't of the Air Force v. Rose, 425 U.S. 352, 361 (1976) (quoting EPA v. Mink, 410 U.S. 73, 80 (1973)). FOIA "is broadly conceived," Mink, 410 U.S. at 80, and its "dominant objective" is "disclosure, not secrecy," U.S. Dep't of Defense v. Federal Labor Relations Authority, 510 U.S.

487, 494 (1994) (quoting Rose, 425 U.S. at 361).

An agency may withhold information responsive to a FOIA request only if the information falls within an enumerated statutory exemption. 5 U.S.C. § 552(b). These "exemptions are 'explicitly exclusive,'" U.S. Dep't of Justice v. Tax Analysts, 492 U.S. 136, 151 (1989) (quoting FAA Administrator v. Robertson, 422 U.S. 255, 262 (1975)), and "have been consistently given narrow compass," id. "The agency bears the burden of justifying any withholding, and the Court reviews the agency claims of exemption de novo." See Bigwood v. U.S. Agency of Int'l Dev., 484 F. Supp. 2d 68, 74 (D.D.C. 2007) (citing 5 U.S.C. § 552(a)(4)(B)).

IV. BASIS OF PLAINTIFF'S CLAIM

Cole was convicted in a jury trial on October 6, 2005, in the U.S. District Court for the Northern District of Texas, Lubbock Division. See United States v. Ricky Lynn Cole, Case No. 5:05-CR-27-C. He was subsequently sentenced to 365 months imprisonment.

During trial, key defense witnesses ultimately refused to testify, claiming they had been threatened by the Government, specifically by FBI Special Agent Derek Stone ("SA Stone"). The interference with defense witnesses caused an unfair trial that resulted in the conviction of one who was actually innocent.

A. SUBSTANTIAL GOVERNMENT INTERFERENCE WITH DEFENSE WITNESSES

Cole has obtained substantial evidence of multiple instances of Government misconduct in his case, including interference with defense witnesses who ultimately refused to testify, and the withholding of vital exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), in the form of company records and FBI "302" reports obtained through a separate FOIA request.

However, of particular importance is the substantial Governmental interference with Tina Cox-Cole ("Cox-Cole"). Cox-Cole was the only eyewitness to the presentation of a confession letter by a third party, as well as witnessing many oral confessions from the third party. The third party admitted guilt, named others who were involved with her, and gave details of the crimes that were previously unknown but were later confirmed by FBI investigation. Through a motion in limine, the prosecution kept the details of the confession letter from being disclosed to the jury.

Cox-Cole traveled from Alaska to Texas for Cole's trial and was prepared to testify as to the confession letter and many oral confessions made by the third party; however, sustained threats and intimidation by the Government, especially by SA Stone, ultimately caused Cox-Cole to refuse to testify at the last moment, causing a total loss of testimony to the jury concerning

the confession letter, many oral confessions, and all evidence of third-party culpability. With the loss of Cox-Cole's testimony, Cole's entire defense of third-party guilt was eliminated from jury consideration.

The Government could present no physical evidence connecting Cole to any crime. Cole was convicted, in large part, because Government threats and intimidation against Cox-Cole scared her from the witness stand.

Cole filed a pro se pretrial motion to dismiss his court-appointed attorney due to, inter alia, counsel's failure to object to the prosecutorial misconduct, including substantial interference with defense witnesses. In the supporting memorandum, Cole detailed several instances of Government misconduct, including the threats and intimidation directed at Cox-Cole by SA Stone. The trial judge ignored Cole's allegations.

During Cole's trial, Cox-Cole was "admonished" by the trial judge, at the direction of the Government and in the absence of the jury, in a final attempt to scare her from the witness stand. During the admonition, Cox-Cole told the judge that she had been threatened by the Government. The trial judge once again ignored the allegations. See Appendix 6.

Furthermore, Cox-Cole has submitted a sworn affidavit in

which she describes the threats and intimidation she received from SA Stone. See Appendix 7-12. One major incident of intimidation by SA Stone occurred the week before Cole's trial was set to begin. It took place at Cox-Cole's place of employment, inside an elementary school on the grounds of Eielson U.S. Air Force Base, just outside Fairbanks, Alaska. SA Stone threatened and abused Cox-Cole verbally, and even physically, in the presence of witnesses and near school children. An investigation of the incident was conducted by the North Star Borough, and SA Stone was officially reprimanded. At the time of his reprimand by North Star Borough officials, SA Stone stated that he got what he wanted, for Cox-Cole not to testify.

Cox-Cole was the victim of Government misconduct, especially from SA Stone. That misconduct, in the form of substantial interference with a defense witness, effectively scared Cox-Cole from the witness stand. The loss of Cox-Cole's testimony constituted the complete and total loss of the evidence of the confession letter and oral confessions of a third party, as well as all evidence of third-party culpability. The jury heard no evidence or testimony of the guilt of any person other than Cole, because of the misconduct of SA Stone. Cole's Sixth Amendment right to Compulsory Process for obtaining witnesses in his favor was denied, as was his Fifth Amendment Due Process right to a fair trial, and his conviction was a direct result of Government misconduct.

Additional misconduct by the Government is demonstrated by a sworn affidavit from Assistant Federal Public Defender Helen Liggett, who was Cole's first pretrial counsel. See Appendix 13. In her affidavit, AFPD Liggett describes "threats" directed at her by the Assistant U.S. Attorney and an FBI agent on Cole's case, which "definitely had the potential to dissuade me from vigorously fulfilling my duty to represent Mr. Cole." Also important in her affidavit, she describes how the FBI agents refused to allow defense witnesses to record their interviews with the FBI agents, and that she knows of "no legitimate reason for an agent refusing to as accurately as possible record witness statements," and that her opinion is that the reason the agents refused to allow the interviews to be recorded is so that they could shape the statements to "fit" their case theory. You will see the exact same allegation made against the Government in the following section concerning the case of the late U.S. Senator Ted Stevens.

B. SENATOR TED STEVENS

This Court is very familiar with the case of the late U.S. Senator Ted Stevens from Alaska, who was convicted in a jury trial in this Court in 2008. Significant misconduct by the FBI and the U.S. Attorney's office occurred in his case. The conviction was vacated based upon that misconduct, and an independent investigation of the misconduct was ordered by the Honorable Emmet

G. Sullivan of the District Court of the District of Colombia.

Cole's claims of Government misconduct are probably tied directly to the same misconduct identified in the Stevens case by the Honorable Judge Sullivan and court-appointed special investigator Henry F. Schuelke, III. Cole has received numerous reports from numerous independent sources that SA Stone was also involved in the misconduct on the Stevens case. Cole has also received reports that SA Stone was relocated from Fairbanks to Anchorage and was disciplined for multiple instances of misconduct, including threats against defense witnesses, and then his employment with the FBI was ultimately terminated as a direct result of continued misconduct.

In the Stevens case, one of the lead investigative agents for the FBI came forward with a complaint of misconduct by the Government, in which he alleged that he witnessed or learned of serious violations of policy, rules, and procedures as well as possible criminal violations. The complaint alleged, among other things, that prosecutors on the case schemed to relocate a Government witness, who had been subpoenaed by both the Government and the defendant, in order to avoid having that witness testify at the trial; attempted to conceal exculpatory information from the defendant; and mishandled evidence.

The complaint also alleges that the lead FBI agent in charge

of the investigation fostered an inappropriate relationship with the Government's main witness; intentionally redacted exculpatory information from a document turned over to the defendant, in order to make that document "fit" with information previously provided to the defendant; and violated numerous rules and regulations, including disclosing to a source that another source had testified before the Grand Jury.

The Government sought to avoid revealing to the defense much, if not most, of the information in the complaint and to completely hide the existence of the complaint and the complaint's allegations from the public.

On February 8, 2012, in an order under In re Special Proceedings, 2012 U.S. Dist. Lexis 15656, Misc. No. 09-0198 (EGS), concerning the Government's motion to seal Mr. Schuelke's investigative Report on the misconduct, the Honorable Judge Sullivan stated that "[t]o deny the public access to Mr. Schuelke's Report under the circumstances of this case would be an affront to the First Amendment and a blow to the fair administration of justice."

Judge Sullivan explained that, "Mr. Schuelke's five-hundred-page Report concludes that the investigation and prosecution of Senator Stevens were permeated by the systematic concealment of significant exculpatory evidence which would have independently

corroborated [his] defense and his testimony, and seriously damaged the testimony and credibility of the Government's key witness" (internal citation and quotations omitted).

Moreover, Judge Sullivan stated that "[w]ithholding the Report from the public and leaving the public with only the information from the trial and immediate post-conviction proceedings would be the equivalent of giving a reader only every other chapter of a complicated book, distorting the story and making it impossible for the reader to put into context the information provided," and that "[t]he First Amendment, the public, and our system of justice demand more."

Judge Sullivan determined that "[f]ollowing the D.C. Circuit's decision in Washington Post v. Robinson [935 F.2d 282 288, 290 U.S. App. D.C. 116 (D.C. Cir. 1991)], the Court specifically found that access to the agent's complaint and any resulting proceedings would be likely to serve the important function of monitoring prosecutorial misconduct, especially where motions made during the trial raised the same or similar allegations as those in the agent's complaint, and the complaint specifically included allegations of such misconduct."

Cole filed a pro se pretrial motion that raised allegations of the exact same misconduct by SA Stone that Cole raises in his FOIA request. Moreover, Cox-Cole specifically raised those same

allegations in open court at Cole's trial. While being "admonished" by the district court at the prosecution's behest, Cox-Cole specifically stated that she had been threatened by Government agents. See Appendix 6. Once again, the trial judge ignored the allegations and moved on.

Ultimately, Judge Sullivan concluded that "[t]he public has an overriding and compelling right to access [Mr. Schuelke's] Report, and that right is protected by the First Amendment." As in Senator Stevens' case, Cole was tried in a very public manner, and when the Government obtained a guilty verdict, it conducted interviews for television news and newspapers to proclaim its victory to the public. The Government even paraded Cole, in cuffs and shackles, in front of the TV cameras for the public to see. But now, as in Senator Stevens' case, when the Government is confronted with allegations of misconduct, especially when that misconduct could cast a serious shadow over the truth and validity of the conviction, the Government seeks to turn the issues from public to private and hide behind a veil of exemptions to cover-up its improprieties. Diplomatic immunity? A person can commit murder and get away with it as long as he hides behind the exemptions. Is that what Congress intended with the Freedom of Information Act? Is that what the Supreme Court envisioned in NLRB v. Robbins, when it stated very clearly that the purpose of FOIA "is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold

the governors accountable to the governed?" 437 U.S. at 242. Is that what Judge Sullivan had in mind when he quoted the Court of Appeals for the District of Columbia in Washington Post v. Robinson, that access to the information would be likely to serve the "important function of monitoring prosecutorial [] misconduct?" 935 F.2d at 288, 290 U.S. App. D.C. 116.

V. FOIA STANDARD OF REVIEW

In National Archives & Records Admin. v. Favish, 541 U.S. 157 (2004), the Supreme Court held that the requester must at a minimum "produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." Favish, 541 U.S. at 174. In Blackwell v. FBI, 646 F.3d 37 (D.C. Cir. 2011), the D.C. Court of Appeals determined that Blackwell did not satisfy the Favish standard, because he only offered his own affidavit in support of his claims of Government misconduct.

Cole on the other hand, offers substantial evidence from several sources. First, Cole raised the allegations of Government misconduct in a pro se pretrial motion. Then, Cox-Cole again raised the same allegations of Government threats against her in open court, which is recorded in the trial transcript. Cox-Cole subsequently submitted a sworn affidavit describing in detail the events that occurred and the threats and intimidation directed at

her by SA Stone and others. Finally, AFPD Liggett submitted a sworn affidavit also describing Government threats and intimidation that were even directed at her by the Government. Moreover, it is highly likely, given the depth of the involvement of the FBI in Alaska, that SA Stone was involved in the case against Senator Stevens, and that he has been disciplined for misconduct on that case and others.

Disclosure of the otherwise protected information may be compelled upon a showing that the public interest -- i.e., that the withheld information is necessary to confirm or refute "compelling evidence that the agency denying the FOIA request is engaged in illegal activity," Quinon v. FBI, 86 F.3d 1222, 1231, 318 U.S. App. D.C. 228 (D.C. Cir. 1996) -- outweighs the privacy interests at stake. The plaintiff "must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." Favish, 541 U.S. at 174. Cole has provided substantial evidence of Government impropriety. That, in conjunction with the fact that serious and extensive misconduct by the Government has already been very publicly proven in the Stevens case, would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.

There was undoubtedly significant misconduct and illegal activity by the Government in the Stevens case. That misconduct

and illegal activity undoubtedly extended far outside just that one isolated case. It is clear that the same agents involved in the Stevens case were also involved in the plaintiff's case, and, in fact, the misconduct in the plaintiff's case actually preceeded the Stevens investigation. The same agents who were responsible for the misconduct in the plaintiff's case continued on to the Stevens investigation, which then became highly public, with a significant public interest that swept the nation. There is a significant and overriding public interest in knowing how far the misconduct and illegal activity spread, and what the Government has done about it. The public deserves to know how far the misconduct reached and what was done about it, if anything. Access to the requested records will only further the public interest of the Stevens case and satisfy the important purpose of the Freedom of Information Act in checking the Government against corruption.

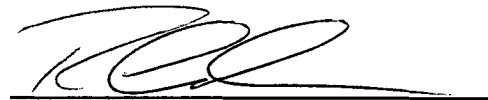
Moreover, in Roth v. DOJ, 642 F.3d 1161 (D.C. Cir. 2011), the Court stated that the public's interest in determining whether the FBI has records supporting an inmate's claim of innocence outweighs the privacy rights of third parties, and that, given the significant public interest in knowing whether the FBI is withholding information that could potentially help the prisoner prove his innocence, the FBI must either produce any records it has pertaining to third parties, or it must follow the normal practice in FOIA cases of identifying the records it has withheld and stating its reasons for doing so. A reasonable person could

believe that SA Stone intimidated and threatened material defense witnesses who could prove his innocence, and that the FBI is withholding information that could corroborate that theory.

CONCLUSION

The public has an overriding interest in knowing whether the Defendant FBI is withholding information of Government impropriety. Therefore, Plaintiff Cole respectfully moves this Honorable Court to compel the Defendant to produce the requested records pursuant to the Freedom of Information Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ricky Lynn Cole', is written over a horizontal line.

Ricky Lynn Cole
pro se plaintiff

FREEDOM OF INFORMATION ACT REQUEST

Name of Agency: Federal Bureau of Investigation

Date: September 21, 2011

Address: 935 Pennsylvania Avenue, N.W.

City/State/Zip: Washington, D.C. 20535

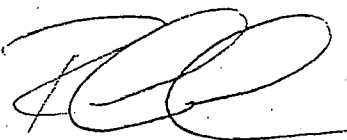
This is a request pursuant to the Freedom of Information Act (5 U.S.C. § 552) in conjunction with the Privacy Act (5 U.S.C. § 552a), for full disclosure and release of all records, information and data contained in all systems of records and files maintained by your agency, related to the following subjects. I request a search reasonably calculated to uncover all documents relevant to this request for information.

I request a copy of the following information: All records, information and reports relating to and including, but not limited to, (1) any and all complaints and accusations of misconduct reported against FBI Special Agent Derek Stone; (2) any and all disciplinary action taken against FBI Special Agent Derek Stone; and (3) the current employment status of FBI Special Agent Derek Stone. In 2005, FBI Special Agent Derek Stone was stationed at Fairbanks, Alaska.

The requested information will support my pending claim of substantial government misconduct. The public has an interest in knowing whether the federal government is withholding information that could corroborate my claim of government misconduct. The disclosure of the existence of the FBI records would further this interest. This public interest outweighs the personal privacy interest.

I therefore request that I be provided with all nonexempt records which are reasonably segregate, and all redacted records, and that I also be provided a Vaughn Index of all excluded records, with a detailed justification for each exclusion. I, of course, reserve my right to appeal the withholding or deletion of any information.

Please send all documents and questions in relation to this request to the address below. I look forward to your response within the time limits set forth in the Freedom of Information Act and Privacy Act. Your prompt compliance to this request is most appreciated.

Signature: 

Name and Mailing Address:

Ricky Cole
Reg. No. 31788-177
FCC Victorville
P.O. Box 5300
Adelanto, CA 92301

Ricky Cole
Fed. Reg. No. 31788-177
FCC Victorville
P.O. Box 5300
Adelanto, CA 92301

November 11, 2011

Director, Office of Information Policy
U.S. Department of Justice
1425 New York Ave., Suite 11050
Washington, D.C. 20530-0001

RE: FOIPA Request No. 1175176-000

Dear OIP Director:

I respectfully appeal the FBI's decision of October 13, 2011 pertaining to FOIPA Request Number 1175176-000, denying my request for information concerning the employment and disciplinary records of FBI Special Agent Derek Stone. The FBI's denial letter claimed FOIA Exemptions 6 and 7(c), saying my request would result in an unwarranted invasion of personal privacy.

In my FOIA request, I stated that I am currently in habeas litigation, in which I am claiming prosecutorial misconduct, specifically substantial interference of critical defense witnesses by Special Agent Stone, and asserted a public interest that outweighs the personal privacy rights of Special Agent Stone. The prosecutorial misconduct had a bearing on the outcome of the trial and is integral with my additional habeas claim of innocence. The public interest asserted is the interest in knowing whether the FBI is withholding information that could corroborate a prisoner's claim of prosecutorial misconduct and also affects his claim of innocence.

In *National Archives & Records Administration v. Favish*, 541 U.S. 157, 172 (2004), the U.S. Supreme Court established two standards that must be met to overcome Exemption 7(c): (1) the public has a significant interest in knowing whether the federal government is withholding information that could corroborate a prisoner's claim of innocence; and (2) disclosure of the existence of the FBI records would further this interest. Although Special Agent Stone has a significant privacy interest, the public also has a very compelling interest in knowing whether the FBI is refusing to disclose information that could bring to light serious prosecutorial misconduct and help exonerate a person claiming innocence. Such a refusal could be construed as prosecutorial misconduct.

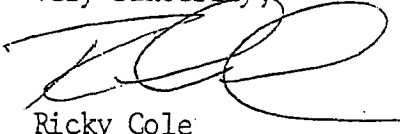
In a recent case in the Court of Appeals for the District of Columbia, *Roth ex rel. Bower v. U.S. Department of Justice*, 642 F.3d 1161 (DC App. 2011), the Court stated that the public's interest in determining whether the FBI has records supporting a Texas death-row inmate's claim of innocence outweighs the privacy rights of third parties, and that, given the significant public interest in knowing whether the FBI is withholding information that could potentially help the prisoner prove his innocence, the FBI must either produce any records it has pertaining to third parties, or it must follow the normal practice in FOIA cases of identifying the records it has withheld and stating its reasons for doing so. I have shown in habeas litigation that a "reasonable person" could believe that Special Agent Stone intimidated and interfered with material defense witnesses, and that the FBI is withholding information that could corroborate that theory.

In further support of my habeas claim of innocence, I have submitted proof to the court that the FBI's response to a previous FOIA request for information under my name revealed some exculpatory information that the prosecution failed to disclose to the defense before trial as required by *Brady v. Maryland*, 373 U.S. 83 (1963). I believe the FBI has additional exculpatory information being withheld in its files that corroborates my claims of innocence and prosecutorial misconduct, and that the information pertains to FBI Special Agent Derek Stone. I am seeking information concerning any reports or complaints of misconduct and disciplinary actions taken against Special Agent Stone, including incidents that occurred during my criminal case, and any other incidents that would exhibit a pattern of misconduct by Special Agent Stone.

The public's interest in determining whether the FBI has records supporting my claims of innocence and prosecutorial misconduct outweighs the privacy rights of Special Agent Stone. Considering the negative attention aimed at the Department of Justice recently through the Senator Ted Stevens case and the extensive USA Today editorial, concerning prosecutorial misconduct and withholding exculpatory evidence, the public's significant interest in my request for withheld information corroborating claims of innocence and prosecutorial misconduct is especially strong at this time.

Therefore, I request that I be provided information in FBI files relating to complaints, disciplinary action, and current employment status of FBI Special Agent Derek Stone, under FOIPA Request Number 1175176-000, based upon the facts that the public has a significant interest in knowing whether the FBI is withholding information that could corroborate claims of innocence and prosecutorial misconduct, that the disclosure of the information would further that interest, and that the public interest outweighs any third party privacy rights. Additionally, I request copies of any public records maintained in FBI files, such as court records and news clippings, pertaining to FBI Special Agent Derek Stone. Such public records do not require the express authorization of the third party, proof of death, or public justification for release.

Very sincerely,



Ricky Cole



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

JAN 11 2012

Mr. Ricky Cole
Register No. 31788-177
Federal Correctional Complex
Post Office Box 5300
Adelanto, CA 92301

Re: Appeal No. AP-2012-00702
Request No. 1175176
SRO:MWH

Dear Mr. Cole:

You appealed from the action of the Federal Bureau of Investigation on your request for access to records concerning allegations of misconduct pertaining to a named Special Agent of the FBI.

The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. After carefully considering your appeal, I am affirming the FBI's action on your request. To the extent that responsive records exist, without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, disclosure of such records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy and would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C).

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the actions of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road,

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College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Sincerely,

Janice Galli McLeod
Associate Director

By: 

Anne D. Work
Senior Counsel
Administrative Appeals Staff

1 THE COURT: Do you understand that if you don't tell
2 the truth, that could open you up to some liability down the
3 road. Do you understand that?

4 MS. COLE: Yes, sir.

5 THE COURT: If there's any doubt in your mind as to
6 what you're about to do or about the consequences of your
7 testimony or the consequences of the cross-examination, you
8 have the right to talk to a lawyer and get his advice
9 concerning the ramifications of your testimony and the
10 potential future actions that might be taken should the
11 government choose to pursue any legal action against you. Do
12 you understand this?

13 MS. COLE: I understand that I was told if I breathed
14 a certain name under any circumstances, I was threatened to be
15 arrested.

16 THE COURT: Well, I'm not--I don't know what the
17 details were, but my point to you is, if there's any question
18 in your mind as to what may be the result of your testimony in
19 this proceeding, you have the right to consult with an
20 attorney. Do you understand that?

21 MS. COLE: Yes.

22 THE COURT: All right. Now, if you cannot afford an
23 attorney, I'm prepared this afternoon to have the magistrate
24 judge appoint you an attorney and have that attorney consult
25 with you before you testify.

Tina Cox-Cole
PO Box 83127
Fairbanks, Alaska
99708

3 October 2012

To Whom It May Concern:

This letter of fact/affidavit is written on behalf of my husband Ricky Cole, whom was wrongly accused and prosecuted for a crime he did not commit. The main purpose of this letter is to briefly explain how I did not get to testify on his behalf. I will be to the point, brief and factual.

I was scheduled to testify in Federal Court in Lubbock, Texas during the week of 10 October 2005. The week prior to the court date, on Wednesday, I believe the date was 3 October 2005. I found information on a computer disk, which had instant messaging to and from Darya Cole, which implicated her in inappropriate and illegal computer usage and verified her information she verbalized and put into writing earlier. As I recall, I had called to speak to her and no one answered, so I left a message, which essentially indicated what I had found and asked her to get help and tell the truth. As I was leaving the message, her mother and stepfather got on the phone. I told her what was found and she called me a few names and I asked her if it all began with her own father, as he had attempted to molest me the summer of 1973 at their home in Borger, Texas. I was asking them to tell the truth, she hung up and I called back and the stepfather answered and was pretty threatening. I believe the courts may have a copy of this. I made this call as I was driving to my next school location, the call ceased at about 2 miles from Eielson Air Force base. The reason I mention this is when the FBI agent (Derek Stone) came to Anderson elementary, located on Eielson Air force Base, he wanted to know if I was on base, as he was going to arrest me or have OSI, for talking on base and told me I could not call anywhere while on base and use my personal phone or any other phone, to speak to individuals pertaining to this case. It is my understanding that he was instructed to come to school after Debbie Chowins (Darya Cole's mother) contacted the FBI in Lubbock, Texas about the phone call. He came to Anderson Elementary on Eielson AFB in the morning of 3 October 2005 and was insistent that I be pulled from Intervention and Family Support meetings, in which building administration, school counselor, numerous staff members (general education and special education) and parent/s attend. It was reported that he did not want to identify himself or show identification, until he realized they were not going to allow that. It was also reported that he was rude and intimidating to the front office staff. The two secretaries at the time were Cathy Matakowski and Stacie Hatcher. Stacie is still employed and could verify. The secretary came to the classroom door where the Intervention meeting was being held and said two gentlemen were there to see me. They were not in sight and as I stepped out in the hall, she asked if it was okay and I said "yes". I assumed they might want to speak about the upcoming trial or maybe ask questions about what I knew. I could tell it was not "good" when

Derek Stone said in a very threatening and intimidating voice "where can we go and speak in private? I indicated that I had an office and that is where I began walking toward. When we entered the room, our special Education paperwork clerk (Sandra Woodward) was there working. He indicated that I would not want anyone there and I said she could stay as she was versed in the law pertaining to confidentiality. He brought with him a man that he at that point indicated that was with OSI and did I know what that meant and to see if I would be looking getting into trouble on base also. The individual with OSI was never introduced by name nor was I given a business card. For all I know, he may not have been who Derek Stone said he was. He proceeded to speak to me about the phone call and said I was to cease and desist or he was going to handcuff me and take me out in front of all the school personnel, parents and children in the hallways. I listened mainly, but as when I tried to answer a question, he yelled at me and interpreted me and told me to "Shut the Fuck Up". I was brought up in a very loving but strict Christian home and the "F" word bothers me tremendously. I believe he was trained well and knew this type of language would bother and intimidate me. I should mention this is a Kindergarten through Second grade campus and there were I believe at that time first grade students in the classroom to the right. I attempted to not show this was getting to me and began to look at clock and counted 34 times in a 10-minute period he used the "F" word. He told me if I so much as ever mentioned Darya Coles' name again he would arrest me for obstruction of justice. I told him I was scheduled to testify (subpoenaed), the plane ticket had been bought, and I had taken off from school. I was told that if I did, I would be arrested for obstructions of justice. I said I was taught to tell the truth and that I needed to testify to what she had done, told me, and had written in a confession letter. He started banging the handcuffs on the table and if I had not moved my right hand, it surely would have had a few broken bones. I did look at the individual introduced as OSI, to see what his reactions were and he did not say a word, but looked down on several occasions as if embarrassed. I kept hoping, he would put a stop to the scare tactics and intimidation, but to my knowledge, he did not ever say a word during the whole ordeal, not even an introduction. There was some minor damage from the handcuffs, the table was sent to have this and the inner rim damage (prior) repaired, the school district would possibly have record of this repair. Whether it was minor damage or not, destruction of property, it was scary and intimidating.

Again, I was not going to let him get to me, as I had done nothing wrong. I indicated that I just wanted to tell the truth. He kept asking if I understood and I said "Yes", I did not indicate I would not testify. He indicated that anytime you do something the government does not want, right or wrong, it is obstruction of justice and did I understand whom I was dealing with. This was a very familiar statement, as Marc Snodgrass, (Attorney for the defendant) had used the same statement on numerous occasions to convince me to not testify and forget about the case. As Agent Stone was leaving, I indicated that this seemed like it fit the description of a terroristic type threat, and he said, "Good, take it as such".

After their departure, my principal (Sherri Merrick) asked me to come to her office and she inquired as to if I was okay. She was very supportive and asked me to come into her office.

Upon my return from court, Human Resources within the Fairbanks North Borough School District (Clarence Bolden), asked to speak to me and my immediate supervisor (Eve Lambert) came along for support. Mr. Bolden asked me what happened and I informed him of the afore mentioned details. He indicated that Derek Stone pretty much collaborated my story. Mr. Bolden asked if I was okay and told me that he informed Mr. Stone that this is not the way we handle things within the school district and that Mr. Stone indicated that if he had it to do over, he would probably do differently but he got what he wanted (me to not testify).

I should mention that a purple folder with some evidence in it on my suitcase disappeared the early morning before we got up to depart for Lubbock, Texas for the court date. It appeared the day after we returned from court and was put on a spotless kitchen table, I feel this was a threat and there was an entry to my home. Derek Stone had come to my home in late September of 2005 about any emails Rick Cole had sent. Apparently, I had not answered the door quick enough, as I approached, he was at the side sliding glass door looking in and attempting to slide the door open. There was another Agent (name ?) at front door looking in side glass window. I opened door and spoke with him. He was cordial and I do not remember Agent Stone saying much of anything, as if this was his supervisor and he was going to watch his behavior.

When I was in Lubbock, Texas in the Federal courthouse, I spoke with Helen Liggett (Rick's first attorney) whom I understand was removed by the judge for investigation on his behalf and was also threatened by local prosecutors and FBI. She asked if I had been brought forward and spoken to from the current attorney to protect me if I testified. I need to mention here that I was told by Marc Snodgrass not to testify or they were going to arrest me and I asked why and he said if you do anything that went against their wishes, it was going to be considered obstruction of justice and he asked me if I liked my job. In addition, in April of 2005, I had been called prior by FBI Agent Quigley and he had asked me if I liked my job also, and I informed him he was threatening my job if I told what I knew which was the truth. I told him I was bound by ethics and morals for what I was told and I would tell what I knew, as I had been taught to tell the truth and respect authority and this was disappointing me. He said are you saying I do not have morals? I should also mention that Helen Liggett asked to testify in Federal Court on behalf of Ricky Cole and my understanding Judge Cummings denied it. She had knowledge of Steve Flores in the case as, accused by Darya Cole and the pregnancy of an underage stepdaughter of one of the employees, whom later changed their story after speaking with FBI agents. This should be on record as Ms. Liggett documented this and he had prior history of molestation.

Marc Snodgrass (Defense attorney) also told me to forget what I knew and that I was naïve if I did not believe there were innocent people in prison; what man would not take the fall for their daughter and I did not know whom I was messing with. He also asked me to talk to my husband to take a plea bargain or they will put him away forever and just "find and add stuff". I indicated you are saying fabricating stuff and he spoke about

suppressing evidence to show his innocence was what Judge Cummings was going to continue to grant. I could not believe they could do this. They did suppress swipe card entries, which would have shown his innocence. He said, "If you made a \$100,000 mistake would you tell your boss?" "Cut your losses and see him in 6-8 years" I said this would not help him, as he was innocent nor get his daughter the help she needed. Needless to say our next conversations went to him cursing at me, in addition to my mother-in-law on the phone the same day. At trial, I went before Judge Cummings after Helen Liggett gave me the information and they assigned me an attorney. I met with him that night at his office, I do not recall his name, however he seemed honest, sincere, and listened with an "open mind". He said he listened to the tape and it just sound like you want her to get help and just what you have told me. He asked me to tell my version of what was going on and what the tape said. He indicated that sometimes these things are too big for us and we have to let the "Big Man Upstairs" take care of things. We agreed to meet the next morning with Marc Snodgrass and he was informed that the information I knew had to be presented or I needed to testify. Marc Snodgrass indicated that it would be told and I would not be testifying. I need to also mention that when Marc Snodgrass spoke to me prior about testifying, he said he was instructed and instruction for me if I was to testify, was to not tell what I did for a living (Educations Diagnostician/School Psych) at the time.

In addition, I should mention, my daughter whom was 8 months pregnant, came to testify also and was met at the airport gate and told I was late and she needed to come with them. They knew her name, not legal name she flew under and insisted she come. She informed them they must have her mistaken with someone else and they informed her of how many females were on board and no others with her name. She got scared, but followed them outside, while deciding what to do. They took her suitcase and she realized this was not what a typical cab looked like and there was a man and woman, that did not have the appearance of cab drivers. She reported to me she remembered what I told her once and ran with her suitcase to a crowd. She watched as the man radioed and she overheard some of what was said and the jest of it was, she got away. The woman was the driver. I believe this also was an intimidation factor. We have asked for a report from Lubbock airport police and videotape and have been repeatedly ignored and denied. I have one individual tell me that the video was not working that day, hard to believe this day and age with tight security that is possible. In addition, stepdaughter (Jordan Cole) stated she was approached by a woman outside the Federal Courthouse, the first day of trial, which appears to fit the same description and was told to go home and not testify. We informed Marc Snodgrass (Defense Attorney) and were ignored. We informed Helen Liggett (prior Defense Attorney) and asked what we should do. She indicated this was probably a scare tactic and would have possibly taken the pregnant daughter somewhere safe until they were sure I would not testify.

I still feel traumatized and threatened by what Agent Stone's verbal and physical actions. In addition, he knew things I had said over the phone, where I had been on occasion, and the attempting to open my sliding glass door, the folder that was taken off my suitcase the night before departure, and a red dot (laser/target type) one night a week before trial shining in my bedroom window above my head, on the headboard. I had nightmares

JURAT WITH AFFIANT STATEMENT

State of Alaska }
 County of FNSB } ss.

- ☒ See Attached Document (Notary to cross out lines 1-8 below)
☐ See Statement Below (Lines 1-7 to be completed only by document signer[s], *not* Notary)

1 _____
 2 _____
 3 _____
 4 _____
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 6 _____
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 8 _____

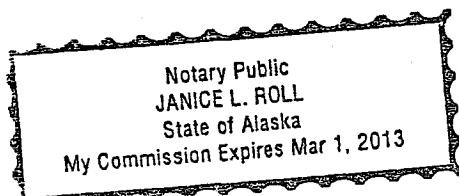
Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

Subscribed and sworn to (or affirmed) before

me this 5 day of November
Date Month

2012 by
Year
 (1) Tina Marie Cox-Cole
Name of Signer(s)

(2) _____
Name of Signer(s)



Place Notary Seal Above

Janice L. Roll
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

after and continue, but not as frequent. My adult and pregnant daughter was so traumatized, that she slept in my bedroom for months. With the thought of the FBI gaining knowledge of this recent COA, I am fearful for family, and myself however, the truth needs to be revealed.

Ima M. Cox-Blp
Signature

5 November 2012
Date

a recording device and offer to record the interviews and provide the FBI agents with copies. I informed them that they had the right to refuse to be interviewed without such a recording. This advice was due to several reports from witnesses that their statements were being misrepresented in FBI reports. It is my understanding that the FBI agents refused to conduct interviews if accurate recordings were going to be made. I have worked in the criminal law field for 18 years, both on the law enforcement side and the defense side, and know of no legitimate reason for an agent refusing to as accurately as possible record witness statements. I requested that the FBI agents explain their refusal to record accurate verbatim witness statements, and they could provide no legitimate reason. My opinion is that the reason is so the agents can shape the statements to fit their case theory.

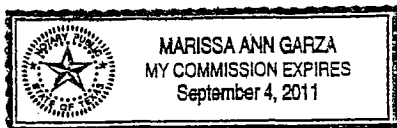
Subsequently to my advising the witnesses as described above, I was visited in my office by the Assistant United States Attorney on the case and one of the FBI case agents. I was informed that criminal charges were being considered against me in connection with the above advice, as well as a grievance with the State Bar of Texas. When I stated exactly what my advice had been, the threats were dropped, but the threats definitely had the potential to dissuade me from vigorously fulfilling my duty to represent Mr. Cole.

The trial began on October 3, 2005, less than 2 months after Mr. Snodgrass was appointed. I left a message for Mr. Snodgrass that I was available to testify as to the statements of Mr. Eldridge and Ms. Rubio concerning Mr. Flores's activity on the computer in question and sexual attraction to female children. I was never called to testify.

Further Affiant saith not:

Allen M. Siggett
AFFLIANT

SUBSCRIBED and SWORN TO before me, on this the 24th day of March, 2009.



Marissa Ann Garza
Notary Public in and for
The State of Texas

My commission expires Sept. 4, 2011

CERTIFICATE OF SERVICE


I, Ricky Lynn Cole, plaintiff in pro se, hereby certify that on June 26, 2013, a true and correct copy of the foregoing, **Motion to Compel Production of Records Pursuant to the Freedom of Information Act**, was served on the following:

United States District Court
For the District of Columbia
Office of the Clerk
333 Constitution Ave., N.W.
Room 1225
Washington, D.C. 20001
Certified Mail Receipt Number: 7009-2820-0003-2372-4263

by placing it in a sealed envelope with prepaid First-Class U.S. postage affixed and depositing in the prison mail system at FCI Safford, Arizona, by handing it to prison officials for forwarding, pursuant to the "prison mailbox rule," Houston v. Lack, 487 U.S. 266 (1988).

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 26th day of June, 2013.



Ricky Lynn Cole, pro se
Reg. No. 31788-177
FCI Safford
P.O. Box 9000
Safford, Arizona 85548